IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 245 OF 2005

Smt. Rucmini Raghunath
Narvekar and others. ... Applicants

versus

Shri Ranjit Satardekar,
Panaji, Goa. ... Respondent

Mr. V. R. Tamba, Advocate for the Applicants.

CORAM : N. A. BRITTO, J.

DATE : 6TH DECEMBER, 2005.

ORAL ORDER

Heard Mr. V. R. Tamba, the learned Counsel on behalf of the applicants who are accused in Private Criminal Case No.63/2003/C and against whom process has been issued by the learned J.M.F.C., Panaji, by his Order dated 30-4-2005 under Section 500 r/w 149 I.P.C.

2. The said complaint was filed by the respondent herein against the applicants herein and their Advocate. The applicants had filed Civil Suit No.97/2001/A through the said Advocate.

Based on certain averments made in the said Civil Suit the complainant filed the said Private Complaint against the said Advocate as well as the applicants who were the said plaintiffs in the said Civil Suit No.97/2001/A. After considering the statement on oath of the complainant and other witnesses, the learned J.M.F.C. vide his Order dated 30-4-2005 dismissed the complaint against the said Advocate who was A-1 in the said Private Case No.63/2003 but issued process against the applicants who were initially accused nos.2 to 11.

3. Against the said Order issuing process against the applicant/accused, the applicants have invoked the extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973(Code, for short) to quash and set aside the said Order issuing process against the applicants/accused.

4. Mr. V. R. Tamba, the learned Counsel on behalf of the applicants has referred to the case of **State of Haryana and others** v. **Bhajanlal and others**(1992 Supp(1) SCC 335) and has submitted that the case at hand is covered by the guidelines

issued by the Supreme Court namely, (1), (3) and (5). Mr. Tamba has also referred to the case of **Dr. Dhanwanti Vaswani** v. **State and another**(1991 Supp(2) SCC 329) in support of his submission that an order issuing process against the accused could be challenged under Section 482 of the Code. It is also submitted by Mr. Tamba that the matter involves a substantial question of law whether the averments made in a Civil Suit would amount to defamation and that being so this would be a fit case for this Court to exercise jurisdiction under Section 482 of the Code.

5. As already stated, the applicants herein have invoked extraordinary jurisdiction of this Court to quash and set aside the Order issuing process against them by the learned J.M.F.C., Panaji. An Order issuing process can be corrected, if correction is required in revisional jurisdiction which has been concurrently conferred on this Court as well as the Court of Session. The power under Section 482 of the Code is very wide but it is self imposed limitation which requires that it should be exercised sparingly and in extraordinary situations. The grievance made by the applicants whether based on the averments made in the Civil Suit, process could be issued

against the plaintiffs who are the accused in the case filed against them by the complainant(respondent herein) could certainly be gone into by the learned Sessions Judge, as well. As stated by this Court in an unreported Judgment dated 6-4-2005 in Criminal Miscellaneous Application No.52/2005 as well as in the reported Judgment of this Court dated 8/21-6-2005 in the case of **V. K. Jain and others** ((2005) 2 Bom.6.R.(CRI) 738) it is desirable that the applicants herein approached the Court of Session in revisional jurisdiction rather than approached this Court in extraordinary jurisdiction under Section 482 of the Code.

6. The applicants herein are at liberty to approach the Court of Sessions and the petition/application shall be returned to the applicants and they will be at liberty to present the same before the Court of Sessions and in case the petition is presented within a period of fifteen days after the same is returned to the applicants then the learned Sessions Judge is directed to dispose of the same expeditiously and in accordance with law. The Certified Copy filed along with this petition shall be returned to the applicants, as requested by Mr. Tamba, the learned Counsel, so that they can file the same before the Court of Sessions, Panaji, with a condition that the same shall be replaced by an ordinary xerox copy.

7. In the light of the above, I find that this is not a fit case to invoke the extraordinary jurisdiction under Section 482 of the Code.

Expedited copy be given to the learned Counsel for the applicants.

N. A. BRITTO, J.

RD.